

**Introduced by Senator Huff**

February 24, 2009

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An act to amend Section 1351 of the Civil Code, relating to common interest developments.

## LEGISLATIVE COUNSEL'S DIGEST

SB 255, as introduced, Huff. Common interest developments.

The Davis-Stirling Common Interest Development Act provides for the creation and regulation of common interest developments. The act defines a "condominium plan" for the purposes of these provisions.

This bill would make a technical, nonsubstantive change to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1351 of the Civil Code is amended to  
2     read:  
3     1351. As used in this title, the following terms have the  
4     following meanings:  
5     (a) "Association" means a nonprofit corporation or  
6     unincorporated association created for the purpose of managing a  
7     common interest development.  
8     (b) "Common area" means the entire common interest  
9     development except the separate interests therein. The estate in  
10    the common area may be a fee, a life estate, an estate for years, or  
11    any combination of the foregoing. However, the common area for  
12    a planned development specified in paragraph (2) of subdivision

(k) may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

(c) “Common interest development” means any of the following:

(1) A community apartment project.

(2) A condominium project.

(3) A planned development.

(4) A stock cooperative.

(d) “Community apartment project” means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.

(e) “Condominium plan” means a plan consisting of (1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan pursuant to this title signed and acknowledged by the following:

(A) The record owner of fee title to that property included in the condominium project.

(B) In the case of a condominium project ~~which~~ *that* will terminate upon the termination of an estate for years, the certificate shall be signed and acknowledged by all lessors and lessees of the estate for years.

(C) In the case of a condominium project subject to a life estate, the certificate shall be signed and acknowledged by all life tenants and remainder interests.

(D) The certificate shall also be signed and acknowledged by either the trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property.

Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests do not need to sign the condominium plan. Further, in the event a conversion to condominiums of a community apartment project or stock cooperative has been approved by the required number of owners, trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the Government Code, the certificate need only be signed by those owners, trustees, beneficiaries, and mortgagees approving the conversion.

1 A condominium plan may be amended or revoked by a  
2 subsequently acknowledged recorded instrument executed by all  
3 the persons whose signatures would be required pursuant to this  
4 subdivision.

5 (f) A “condominium project” means a development consisting  
6 of condominiums. A condominium consists of an undivided interest  
7 in common in a portion of real property coupled with a separate  
8 interest in space called a unit, the boundaries of which are described  
9 on a recorded final map, parcel map, or condominium plan in  
10 sufficient detail to locate all boundaries thereof. The area within  
11 these boundaries may be filled with air, earth, or water, or any  
12 combination thereof, and need not be physically attached to land  
13 except by easements for access and, if necessary, support. The  
14 description of the unit may refer to (1) boundaries described in the  
15 recorded final map, parcel map, or condominium plan, (2) physical  
16 boundaries, either in existence, or to be constructed, such as walls,  
17 floors, and ceilings of a structure or any portion thereof, (3) an  
18 entire structure containing one or more units, or (4) any  
19 combination thereof. The portion or portions of the real property  
20 held in undivided interest may be all of the real property, except  
21 for the separate interests, or may include a particular  
22 three-dimensional portion thereof, the boundaries of which are  
23 described on a recorded final map, parcel map, or condominium  
24 plan. The area within these boundaries may be filled with air, earth,  
25 or water, or any combination thereof, and need not be physically  
26 attached to land except by easements for access and, if necessary,  
27 support. An individual condominium within a condominium project  
28 may include, in addition, a separate interest in other portions of  
29 the real property.

30 (g) “Declarant” means the person or group of persons designated  
31 in the declaration as declarant, or if no declarant is designated, the  
32 person or group of persons who sign the original declaration or  
33 who succeed to special rights, preferences, or privileges designated  
34 in the declaration as belonging to the signator of the original  
35 declaration.

36 (h) “Declaration” means the document, however denominated,  
37 which contains the information required by Section 1353.

38 (i) “Exclusive use common area” means a portion of the  
39 common areas designated by the declaration for the exclusive use  
40 of one or more, but fewer than all, of the owners of the separate

1 interests and which is or will be appurtenant to the separate interest  
2 or interests.

3 (1) Unless the declaration otherwise provides, any shutters,  
4 awnings, window boxes, doorsteps, stoops, porches, balconies,  
5 patios, exterior doors, doorframes, and hardware incident thereto,  
6 screens and windows or other fixtures designed to serve a single  
7 separate interest, but located outside the boundaries of the separate  
8 interest, are exclusive use common areas allocated exclusively to  
9 that separate interest.

10 (2) Notwithstanding the provisions of the declaration, internal  
11 and external telephone wiring designed to serve a single separate  
12 interest, but located outside the boundaries of the separate interest,  
13 are exclusive use common areas allocated exclusively to that  
14 separate interest.

15 (j) “Governing documents” means the declaration and any other  
16 documents, such as bylaws, operating rules of the association,  
17 articles of incorporation, or articles of association, which govern  
18 the operation of the common interest development or association.

19 (k) “Planned development” means a development (other than  
20 a community apartment project, a condominium project, or a stock  
21 cooperative) having either or both of the following features:

22 (1) The common area is owned either by an association or in  
23 common by the owners of the separate interests who possess  
24 appurtenant rights to the beneficial use and enjoyment of the  
25 common area.

26 (2) A power exists in the association to enforce an obligation  
27 of an owner of a separate interest with respect to the beneficial use  
28 and enjoyment of the common area by means of an assessment  
29 which may become a lien upon the separate interests in accordance  
30 with Section 1367 or 1367.1.

31 (l) “Separate interest” has the following meanings:

32 (1) In a community apartment project, “separate interest” means  
33 the exclusive right to occupy an apartment, as specified in  
34 subdivision (d).

35 (2) In a condominium project, “separate interest” means an  
36 individual unit, as specified in subdivision (f).

37 (3) In a planned development, “separate interest” means a  
38 separately owned lot, parcel, area, or space.

1 (4) In a stock cooperative, “separate interest” means the  
2 exclusive right to occupy a portion of the real property, as specified  
3 in subdivision (m).

4 Unless the declaration or condominium plan, if any exists,  
5 otherwise provides, if walls, floors, or ceilings are designated as  
6 boundaries of a separate interest, the interior surfaces of the  
7 perimeter walls, floors, ceilings, windows, doors, and outlets  
8 located within the separate interest are part of the separate interest  
9 and any other portions of the walls, floors, or ceilings are part of  
10 the common areas.

11 The estate in a separate interest may be a fee, a life estate, an  
12 estate for years, or any combination of the foregoing.

13 (m) “Stock cooperative” means a development in which a  
14 corporation is formed or availed of, primarily for the purpose of  
15 holding title to, either in fee simple or for a term of years, improved  
16 real property, and all or substantially all of the shareholders of the  
17 corporation receive a right of exclusive occupancy in a portion of  
18 the real property, title to which is held by the corporation. The  
19 owners’ interest in the corporation, whether evidenced by a share  
20 of stock, a certificate of membership, or otherwise, shall be deemed  
21 to be an interest in a common interest development and a real estate  
22 development for purposes of subdivision (f) of Section 25100 of  
23 the Corporations Code.

24 A “stock cooperative” includes a limited equity housing  
25 cooperative which is a stock cooperative that meets the criteria of  
26 Section 33007.5 of the Health and Safety Code.